

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1123 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT

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KOKILABEN SHAILESHBHAI SHAH

Versus

KANTILAL PARSOTTAMDAS PATEL

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Appearance:

MR JC VYAS for Petitioners

MR CC BHALJA for Respondent No. 1, 2, 3, 4

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CORAM : THE CHIEF JUSTICE G.D.KAMAT

Date of decision: 09/12/96

ORAL JUDGEMENT

Rule. By consent, to be heard forthwith.

Petitioners instituted a suit for specific performance of a contract. It is the 1st case that by virtue of an Agreement for Sale dated 6th of June, 1989, the respondents agreed to sell a parcel of land, measuring 9206 sq. metres of property, bearing Survey No.301/4, Block No.403, situated in the sim of Bopal, Taluka Dascroi, District Ahmedabad. The respondents filed a written statement and took up a defence that they have really no objection to sell the land in terms of the Agreement for Sale dated 1.6.1989, but, however, there is a statutory bar against the sale of the land. In that, the averment is that the land covered under the Agreement for Sale dated 6.6.1989 is an agricultural land and no such land can be sold to a non-agriculturist. The bar, it appears, is invoked by virtue of Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948. No specific issue was framed regarding the tenancy of the respondent, but, it appears that, on the basis of the issues raised, the respondents moved an application

before the trial court that it will be necessary for the decision in the suit whether the petitioners are agriculturists and, therefore, the respondents prayed that appropriate issue be framed and referred to the Mamlatdar for his decision. The Court found favour with the prayer of the respondents and directed that the matter of issue No.5 be referred to the Mamlatdar. Feeling aggrieved, the petitioners challenge this order. According to the petitioners, the matter of issue No.5, which required the trial court to decide whether the bar of Section 63 of the Agricultural Lands Act and burden of which is cast on the respondent, could not have been referred to the Mamlatdar for decision as it is never the case of the petitioners that they were at any time 'agriculturists'. It is also sought to be contended that even in the suit, the petitioners have claimed the relief for a direction to the respondent to obtain non-agricultural use permission from the concerned authorities for seeking the relief of specific performance of the contract.

In view of the assertion made by the petitioners that they were never agriculturists nor ever claimed to be so, this Court found it incongruous to refer the matter of issue No.5 to the Mamlatdar and invite his decision thereon. This Court, therefore, called upon the petitioners to file affidavits, placing it on record that they never claimed to be agriculturists. The petitioners have accordingly filed affidavits today, which are taken on record, clearly averring that they are not agriculturists. In this view of the matter, the stand of the petitioner is clear that they are not claiming to be agriculturists and, therefore, the matter of issue No.5 need not be referred to the Mamlatdar to decide whether or not the petitioners are agriculturists. I may, however, clarify that issue No.5 has not been deleted and it stands and all that this Court has done by virtue of this judgment is that in view of the admission made by the petitioners that they are not agriculturists, no specific decision is required from the Mamlatdar. To the extent indicated, revision application succeeds and the impugned order of the trial court dated 1st of June, 1996 in Special Civil Suit No.176 of 1991 to stand accordingly modified and varied. Rule to the extent indicated is made absolute.

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(apj)